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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY RAYNARD PARKER,

Defendant and Appellant.

B289170

(Los Angeles County
Super. Ct. No. GA099186)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Joseph P. Lee and A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.

On August 30, 2016, Larry Raynard Parker pleaded no contest to a charge of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(4).)¹ The trial court sentenced Parker to three years in prison and suspended imposition of the sentence, placing Parker on probation for three years. While on probation, Parker was arrested for lewd conduct (§ 314) and disturbing the peace (§ 415). At a hearing on February 14, 2018, the trial court found Parker to be in violation of his probation and set the matter for a probation violation sentencing hearing. At a March 29, 2018 hearing, the court sentenced Parker to the previously imposed but suspended three-year sentence.

Parker contends the trial court erred in denying his request to represent himself (a *Faretta*² motion) at the probation violation sentencing hearing. Finding no error, we affirm.

BACKGROUND

As outlined below, throughout the proceedings in this case, Parker had a history of making and withdrawing *Faretta* motions, as well as interrupting and arguing with the court.

At the outset of the July 18, 2016 preliminary hearing on the assault charge, defense counsel informed the trial court (Judge Terry A. Bork) Parker wanted to represent himself. After defense counsel and Parker conferred off the record, counsel informed the court, “Mr. Parker’s had a change of heart; he’s going to stick with me for today.”

¹ Further statutory references are to the Penal Code.

² *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

At the next hearing, the August 1, 2016 arraignment hearing before Judge Dorothy L. Shubin, Parker made and withdrew another request to represent himself, as indicated on the court's minute order.

At the beginning of the following hearing on August 30, 2016, defense counsel informed the trial court (Judge Shubin) Parker wanted to represent himself at the trial on the assault charge. As counsel was stating for the record why he advised Parker against representing himself, Parker interrupted and commented, "I'll send myself to prison." The court admonished Parker to refrain from interrupting and to think about the reasons it might be difficult to represent himself while incarcerated. The court took a recess so Parker could review and fill out a *Faretta* waiver form.

During the recess, the prosecutor made a plea offer, which defense counsel discussed with Parker, and Parker indicated he wished to accept. Back on the record, Parker withdrew his request to represent himself, and the prosecutor began taking the plea. As the prosecutor and the court reviewed with Parker the terms of probation, Parker argued with them about the term prohibiting him from possessing or using alcohol ("How you going to tell me I can't drink? A legal substance, man"). Parker asked the prosecutor if he drank alcohol and told the prosecutor, "Seems like you need a little help yourself." Ignoring these comments, the prosecutor explained to Parker if he did not accept the plea he would remain in jail for at least another month until his case went to trial. Parker indicated he wanted to proceed to trial, commenting, "You already got me hands down anyway. You coming at me with this sucker shit. Do you know what I mean?"

Defense counsel conferred with Parker and informed the trial court Parker did not want to continue with the plea and wanted a hearing on his request to represent himself. The prosecutor withdrew the plea offer. During the prosecutor's comments, the trial court broke in and addressed Parker, as follows: "Mr. Parker, I'm going to tell you this one time. Do not interrupt when someone else is speaking. As I explained earlier, if you wish to represent yourself, there are certain rules of conduct which all attorneys and all pro pers are expected to observe."³

The trial court then reviewed with Parker the information on the *Faretta* waiver form he had filled out. When the court asked Parker if he had any questions about his constitutional rights, Parker responded, "I do have one. Is it the same as White boy's? How about that?" When the court asked Parker if he understood his right to counsel, Parker responded, "I'll send myself to prison. . . . And get it over with and avoid the rush." Later in the proceeding, the court admonished Parker: "You must not abuse the dignity of the court. The court may terminate your right to self-representation in the event that you engage in serious misconduct or obstruct the conduct and progress of the trial." Parker confirmed he understood the admonishment.

As the court continued reviewing the information on the *Faretta* waiver form, Parker interrupted the court, stating he wanted to accept the plea offer. After the court completed its statement, Parker reiterated, "I'll take that railroad deal." He

³ The court reporter did not transcribe any interruption by Parker at this juncture.

withdrew his request to represent himself and entered the negotiated plea.

After his arrest for lewd conduct and disturbing the peace, Parker (who was in custody) appeared at a hearing on February 13, 2018, and informed the trial court (Judge Teri Schwartz)⁴ he was representing himself in that misdemeanor case, as well as two other misdemeanor cases. The court set a probation revocation hearing for the following day.

At the February 14, 2018 probation revocation hearing, Parker gave up his pro. per. status and accepted representation from the alternate public defender. The prosecutor called two witnesses regarding the allegations of lewd conduct and disturbing the peace. When the first witness testified that Parker pulled down his pants and boxer shorts in front of her, Parker interjected, “I don’t wear boxers.” Shortly thereafter, the same witness testified Parker exposed himself for two minutes, and Parker stated, “That’s a long time.” The trial court warned Parker he would be removed from the courtroom if he continued to make comments while witnesses testified. Parker apologized. After hearing the witnesses’ testimony and arguments by counsel, the court found Parker to be in violation of his probation and set the matter for a probation violation sentencing hearing.

At the outset of the March 29, 2018 sentencing hearing, defense counsel informed the trial court Parker wanted to

⁴ Judge Schwartz made the ruling Parker challenges on appeal—the denial of his request to represent himself at the probation violation sentencing hearing. We included the above summary of proceedings before other judges because Parker’s conduct at other hearings is germane to our review of the challenged ruling.

represent himself. The court placed the matter on second call so Parker could fill out a *Faretta* waiver form.

When it recalled the matter, the trial court noted Parker waffled at previous hearings about whether he wanted to represent himself. Parker stated, "I'm sure this time." The court told Parker it would find his *Faretta* motion timely if he was ready to proceed with sentencing. Parker responded, "Go ahead. Handle your business." The court asked Parker if he wanted to proceed, and Parker asked, "Do I have to go to prison?" The court stated it was attempting to convey to him that it was not going to continue sentencing. Parker replied, "I don't understand why I got to keep coming back and forth down here. I just don't get it." The court explained to Parker that he did not need to come back because he could be sentenced that day. Parker asked, "Sentenced to what, though?" The court called a recess and asked defense counsel to confer with Parker about what the court was asking him.

After the recess, the trial court noted "there were several outbursts and interruptions" by Parker during the break, while the court was hearing other matters. As defense counsel summarized the discussion that occurred off the record, Parker interrupted to correct counsel on the name of a services provider counsel mentioned. The court admonished Parker, "Do not interrupt." Defense counsel finished his statement and asked for a break to confer with Parker.

After the break, defense counsel confirmed Parker was ready to proceed with sentencing. The trial court inquired whether Parker would be represented by counsel, and another break was taken. The court then asked Parker if he wanted representation from the alternate public defender, and Parker

responded, “I don’t see any reason why I need anybody.” The court explained:

“Well, I haven’t granted you pro per status yet. If you think you are deserving of or you wish to have pro per status, we’re going to have to have a hearing on that. [¶] What is it you want to do? [The deputy alternate public defender] is here. He’s familiar with your cases. I think you’d be foolish to try to represent yourself at this late stage in the game. But if you wish to represent yourself, I’ll discuss that with you further. You’ve interrupted this court on several occasions, and I’m not going to tolerate that anymore. Okay? [¶] You’ve represented yourself before. Is that what you want to do?” Parker responded affirmatively.

As the trial court was explaining to Parker the maximum sentence in the matter, the court asked the prosecutor for clarification. During their discussion, Parker interjected, “Subtract 18 months from this three years.” The court again admonished Parker, “you can’t interrupt, okay?” The court asked Parker, “Do you understand that the maximum you can get is three years [for the suspended sentence on the felony assault] plus one year [for the misdemeanor case].” Parker responded, “No.” The following exchange occurred:

“THE COURT: Maybe you shouldn’t be representing yourself; right?

“[Parker]: I don’t know.

“THE COURT: Do you want to withdraw the request?

“[Parker]: I want to represent myself.

“THE COURT: Mr. Parker, I asked you a very simple question. Do you understand that the maximum sentence you

could receive is three years on the felony and one year on the misdemeanor?

“[Parker]: Oh, yeah, I understand that.

“THE COURT: That’s four years.

“[Parker]: I understand that.

“THE COURT: It’s consecutive.

“[Parker]: I understand that.

“THE COURT: And you filled out the *Faretta* form and initialed it and dated and signed it; is that correct?

“[Parker]: Yeah.

“THE COURT: And you understand that you have a right to have an attorney represent you but you may represent yourself. If you do represent yourself and you’re not happy with the sentence, you can’t file an appeal and claim you had ineffective assistance of counsel at the sentencing. [¶] Do you understand that?

“[Parker]: I might as well stick with this sucker right here then.

“THE COURT: I’m denying the pro per request. Mr. Parker doesn’t seem to be able to conduct himself appropriately with the requisite amount of impulse control and decorum. And given his earlier outbursts and interruptions of the court while the court was on the bench conducting business, I will find that he is not entitled to represent himself at this proceeding. So [the deputy alternate public defender] is going to remain on the case.”

Parker continued to disrupt the sentencing hearing, making inappropriate comments to the trial court (“Who do you think you are anyway?”; “Open your eyes and maybe you can see;” “That’s in your mind”) and the prosecutor (insinuating the prosecutor could not remember something because he was “a

drunk”). The court warned Parker it would remove him from the courtroom if he continued to interrupt.

The trial court sentenced Parker to three years in prison, the previously imposed but suspended sentence for the felony assault.

DISCUSSION

Parker contends the trial court erred in denying his request to represent himself at the probation violation sentencing hearing.

A criminal defendant generally “has a constitutional right to proceed *without* counsel when he voluntarily and intelligently elects to do so.” (*Faretta, supra*, 422 U.S. at p. 807, italics added.) Ordinarily, a “trial court must grant a defendant’s request for self-representation if three conditions are met. First, the defendant must be mentally competent, and must make his request knowingly and intelligently, having been apprised of the dangers of self-representation. [Citations.] Second, he must make his request unequivocally. [Citations.] Third, he must make his request within a reasonable time before trial.” (*People v. Welch* (1999) 20 Cal.4th 701, 729.)

We independently review the entire record to determine whether a defendant made a knowing, intelligent, and unequivocal request for self-representation. (*People v. Dent* (2003) 30 Cal.4th 213, 218; *People v. Watts* (2009) 173 Cal.App.4th 621, 629.)⁵

⁵ The trial court did not find Parker’s request for self-representation was unknowing, unintelligent, or equivocal, and the parties do not address these factors in their appellate briefing. The trial court denied the request based on Parker’s disruptive behavior, and that is the issue the parties address.

In some instances, however, we review the decision for abuse of discretion, as a trial court “possesses much discretion” in deciding whether to deny a defendant’s motion for self-representation based on the defendant’s “disruptive behavior.” (*People v. Welch, supra*, 20 Cal.4th at p. 735.) “The right of self-representation is not a license to abuse the dignity of the courtroom.” (*Faretta, supra*, 422 U.S. at p. 834, fn. 46.) A “defendant requesting the right of self-representation must possess the ability and willingness ‘to abide by rules of procedure and courtroom protocol.’” (*People v. Watts, supra*, 173 Cal.App.4th at p. 629.) “Thus, a trial court must undertake the task of deciding whether a defendant is and will remain so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his or her actions or words as to preclude the exercise of the right to self-representation.” (*People v. Welch, supra*, 20 Cal.4th at p. 735.) “We are . . . aware that the extent of a defendant’s disruptive behavior may not be fully evident from the cold record, and that one reason for according deference to the

Based on our review of the record, Parker’s *Faretta* request at the sentencing hearing was equivocal and could have been denied on that basis. “A motion for self-representation made in passing anger or frustration, an ambivalent motion, or one made for the purpose of delay or to frustrate the orderly administration of justice may be denied.” (*People v. Marshall* (1997) 15 Cal.4th 1, 23.) The last statement Parker made before the court denied his *Faretta* request demonstrates his ambivalence about the request and the role anger and frustration played: “I might as well stick with this sucker [the deputy alternate public defender] right here then.” Throughout these proceedings, Parker expressed ambivalence about self-representation, as he made and withdrew his many *Faretta* motions.

trial court is that it is in the best position to judge defendant's demeanor." (*Ibid.*) The trial court's exercise of discretion in deciding whether to deny a motion for self-representation based on the defendant's disruptive behavior " 'will not be disturbed in the absence of a strong showing of clear abuse.' " (*Ibid.*)

There was no abuse of discretion here. Parker demonstrated an inability or unwillingness "to conform his behavior to the rules of procedure and courtroom protocol." (*People v. Watts, supra*, 173 Cal.App.4th at p. 630.) He continued to interrupt the court and make disrespectful comments, even after being admonished by both Judge Shubin and Judge Schwartz. Parker "was unable to control himself even when acting under the guidance of counsel." (*Ibid.*) Thus, the trial court did not abuse its discretion in determining Parker would continue to abuse the dignity of the court if permitted to represent himself.

Parker argues on appeal, "There is no record why the court could not have informed [him] of the consequences of his outbursts and demeanor, and why possible court sanctions could not have controlled his behavior." Parker was advised of the consequences of his conduct. At the August 30, 2016 plea hearing, Judge Shubin explained to him that his disruptive behavior would disqualify him from representing himself. Before denying the *Faretta* request at the probation violation sentencing hearing, Judge Schwartz informed Parker that if he wanted to represent himself, the court would not "tolerate" any more interruptions. Parker's behavior remained consistent, exhibiting an inability or unwillingness to control himself and conform to courtroom protocol. It is unclear what "court sanctions" Parker now believes could have controlled his behavior.

The trial court observed Parker’s conduct—not only his interruptions and disrespectful comments on the record, but also his “several outbursts and interruptions” during an off-the-record-discussion with defense counsel. Accordingly, the trial court was in the best position to determine if Parker’s behavior disqualified him from representing himself. We accord deference to the trial court’s decision and will not disturb it because the record does not demonstrate abuse of discretion.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.